

UNIT 6 LIMITING COMPETITION

September 2002

(FAC 2001-09)

Overall Duty	Limit competition only when it is appropriate to the acquisition situation based on business strategies and market environments.
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Conditions	Given forecast requirements, written or unwritten acquisition plan, market research, Procurement Request, and other related documents.
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Overall Standard	<p>Correctly limit competition when appropriate under the acquisition situation considering such factors as the.</p> <ul style="list-style-type: none">• Urgency of the requirement;• Existence of exclusive licensing agreements for the product or service required;• Need to provide for industrial mobilization;• Availability of competitive sources capable of satisfying the requirement;• Restrictions related to international agreements;• Effect of statutory requirements;• Effect of publicizing the requirement on national security; and• Overall effect on the public interest.
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Part A: Sole Source Under Simplified Acquisition

Sub-Duty	Restrict a simplified acquisition to a sole source when appropriate.
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Sub-Duty Standard	Correctly limit competition when appropriate under the acquisition situation.
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Part B: Limiting Competition in Other Than Simplified Acquisitions

Sub-Duty	Limit competition by restricting it to one or a limited number of sources or by excluding sources from full and open competition.
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Sub-Duty Standard	Correctly limit competition when appropriate under the acquisition situation.
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Part C: Considering Unsolicited Proposals

Sub-Duty	Take action to negotiate an unsolicited proposal on a sole source basis or to reject the proposal.
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Sub-Duty Standard	<p>Correctly take action to negotiate an unsolicited proposal on a sole source basis or to reject the proposal by</p> <ul style="list-style-type: none">• Assuring that it receives an appropriate evaluation;• Determining whether to accept or reject it;• Completing the documentation needed to negotiate an acceptable proposal on a sole source basis.• Notifying the offeror that the Government has determined to reject its unsolicited proposal.
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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
5.202(a)(8)		Synopsizing negotiation of an unsolicited proposal.
6.2		Full and open competition after exclusion of sources.
6.3		Other than full and open competition.
6.5		Competition Advocates.
13.104		Promoting competition
13.106-1		Soliciting competition.
13.202		Competition requirements for micro-purchases.
13.501		Special documentation requirements.
15.6		Unsolicited proposals.
19		Small Business Programs
35.007(i)		Responding to concerns that have a new idea or product that incorporates the results of independent research and development.

Other KSA's

1. Skill at market analysis; knowledge of business goals and strategies, market environments, market segments and product differentiation, product life cycles and market evolution, market channels/middlemen, and industrial markets.
2. Knowledge of the characteristics of competitive markets (e.g., strategies and tactics of competing entities, barriers and incentives to entering a market, predatory and exclusionary tactics, unfair and unethical competition, restraint of trade, and monopolization).
3. Knowledge of socio-economic programs related to source identification and competition.
4. Knowledge of competition requirements for micro-purchases.
5. Knowledge of laws on patents, copyrights, and trade secret(s).
6. The ability to make decisions on the need to limit competition.
7. The ability to influence users on factors affecting competition.
8. The ability to effectively communicate regarding factors that require limitations on competition.
9. Ability to maintain the honesty and integrity of the acquisition process.

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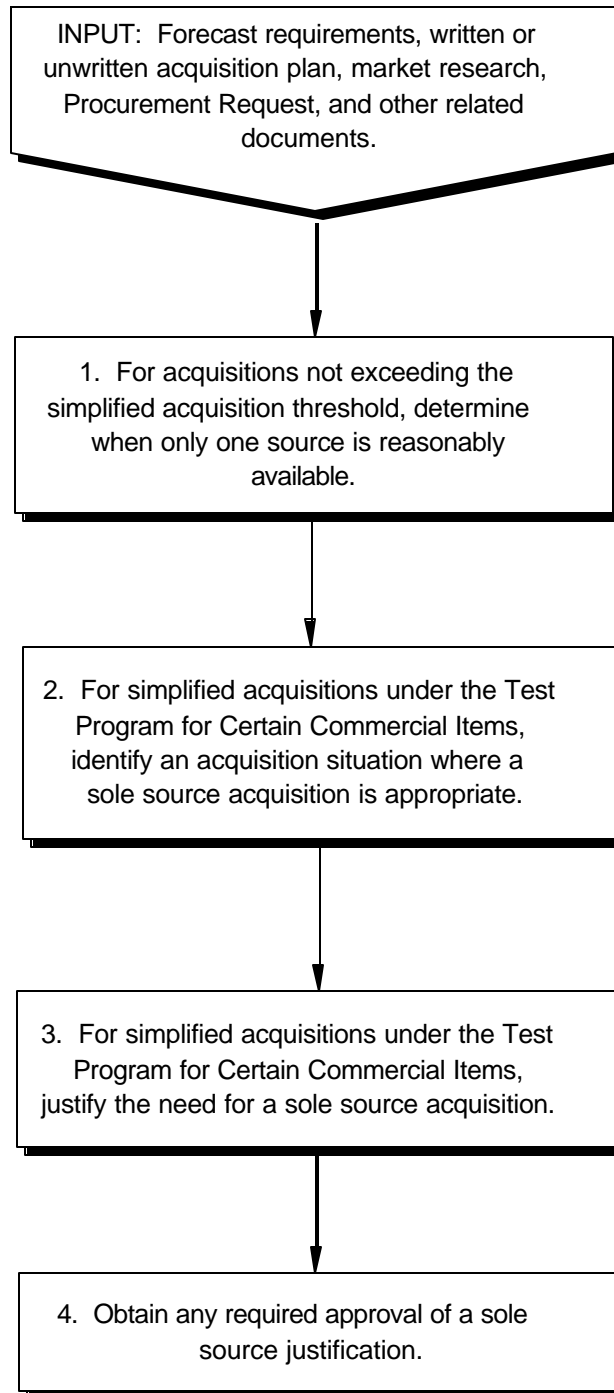
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Other Policies and References (Annotate As Necessary):

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Part A: Sole Source Under Simplified Acquisition

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Part A: Sole Source Under Simplified Acquisition

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Tasks	Related Standards
1. For acquisitions not exceeding the simplified acquisition threshold, determine when only one source is reasonably available.	Correctly determine when one source is reasonably available because of factors such as the: <ul style="list-style-type: none">• Urgency of the requirement;• Existence of exclusive licensing agreements for the product or service required; and• Need to provide for industrial mobilization.
2. For simplified acquisitions under the Test Program for Certain Commercial Items, identify an acquisition situation where a sole source acquisition is appropriate.	Correctly determine when a sole source acquisition is appropriate considering such factors as the: <ul style="list-style-type: none">• Urgency of the requirement;• Existence of exclusive licensing agreements for the product or service required;• Need to provide for industrial mobilization;• Availability of competitive sources capable of satisfying the requirement;• Restrictions related to international agreements;• Effect of statutory requirements; and• Effect of publicizing the requirement on national security.
3. For simplified acquisitions under the Test Program for Certain Commercial Items, justify the need for a sole source acquisition.	Prepare the justification following the guidelines at FAR 6.303 and FAR 6.302. Each justification must contain sufficient facts to justify the use of the authority cited. The cognizant Contracting Officer must certify that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.

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Part A: Sole Source Under Simplified Acquisition

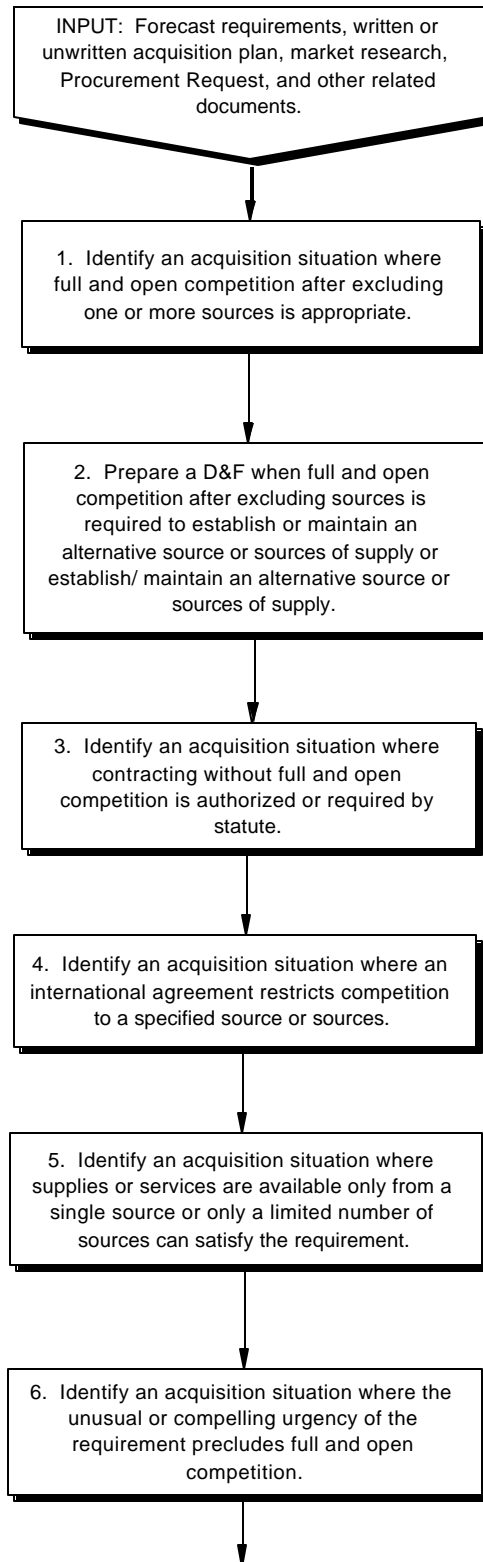
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Tasks	Related Standards
4. Obtain any required approval of a sole source justification.	<p>Each sole source justification must be approved in writing. For a proposed contract:</p> <ul style="list-style-type: none">• Over \$100,000 but not exceeding \$500,000, the Contracting Officer's certification of the justification will serve as approval unless a higher approving level is established in agency procedures.• Over \$500,000 but not exceeding \$5 million the Competition Advocate for the procuring activity must approve the justification. This authority is not delegable.

UNIT 6 LIMITING COMPETITION

Part B: Limiting Competition in Other Than Simplified Acquisitions

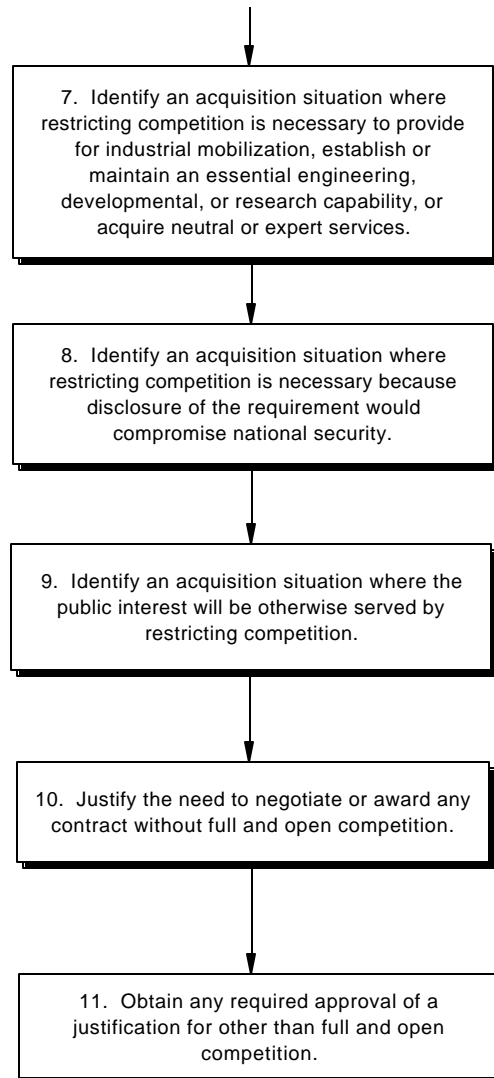
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Part B: Limiting Competition in Other Than Simplified Acquisitions

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UNIT 6 LIMITING COMPETITION

Part B: Limiting Competition in Other Than Simplified Acquisitions

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Tasks	Related Standards
1. Identify an acquisition situation where full and open competition after excluding one or more sources is appropriate.	<p>Full and open competition means that all responsible sources are permitted to compete. An agency may exclude a source or sources:</p> <ul style="list-style-type: none"> • To establish or maintain an alternative source or sources of supply if the Agency Head determines to do so in accordance with FAR 6.202(a). • To fulfill statutory requirements related to the Small Business Act. No separate justification or determination and findings (D&F) is required. • To fulfill statutory requirements related to 8(a) competition. No separate justification or D&F is required. • To fulfill statutory requirements related to the HUBZone Act of 1997. No separate justification or D&F is required.
2. Prepare a D&F when full and open competition after excluding sources is required to establish or maintain an alternative source or sources of supply or establish/maintain an alternative source or sources of supply.	<p>Prepare the D&F for agency head or designee signature based on a determination that excluding sources will:</p> <ul style="list-style-type: none"> • Increase or maintain competition and likely result in reduced overall costs; • Be in the interest of national defense in case of a national emergency or industrial mobilization; • Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; • Ensure the continuous availability of a reliable source of supplies or services; • Satisfy projected needs based on a history of high demand; or • Satisfy a critical need for medical, safety, or emergency supplies. <p>Class D&Fs are not authorized.</p>

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Tasks	Related Standards
3. Identify an acquisition situation where contracting without full and open competition is authorized or required by statute.	<p>Correctly verify statutory direction to restrict competition when:</p> <ul style="list-style-type: none"> • A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or • The agency's need is for a brand name commercial item for authorized resale. <p>Consider the limitations identified at FAR 6.302-5(c).</p>
4. Identify an acquisition situation where an international agreement restricts competition to a specified source or sources.	Correctly identify situations where full and open competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.
<p>5. Identify an acquisition situation where supplies or services are available only from a single source or only a limited number of sources can satisfy the requirement.</p> <p>Note: An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. Other than full and open competition must be justified before using such a description.</p>	<p>The identification must be fully supported by market research. When the required supplies or services are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.</p> <ul style="list-style-type: none"> • For supplies or services offered in an unsolicited proposal see the requirements in Unit 6, Part B. • Supplies may be deemed to be available only from the original source in the case of certain follow-on development or production contracts when it is likely that award to another source would result in substantial duplication of cost or unacceptable delays.

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Tasks	Related Standards
6. Identify an acquisition situation where the unusual or compelling urgency of the requirement precludes full and open competition.	<p>Data from the requiring activity must fully support the urgency of the requirement and that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.</p> <p>Do not cite this justification if compelling urgency results solely from lack of advance planning by the requiring activity and/or pending expiration of funds.</p> <p>Request offers from as many sources as practicable under the circumstances.</p>
7. Identify an acquisition situation where restricting competition is necessary to provide for industrial mobilization, establish or maintain an essential engineering, developmental, or research capability, or acquire neutral or expert services.	<p>Data from the requiring activity must fully support an evaluation that full and open competition need not be provided for because it is necessary to award the contract to a particular source or sources in order:</p> <ul style="list-style-type: none">• To maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization;• To establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or• To acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

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Tasks	Related Standards
8. Identify an acquisition situation where restricting competition is necessary because disclosure of the requirement would compromise national security.	<p>Information from the requiring activity must fully support an evaluation that disclosure of the agency's requirement would compromise the national security (<i>e.g.</i>, would violate security requirements). It must not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.</p> <p>Do not construe this authority as automatically allowing sole-source procurement. Select methods for identifying sources and soliciting offers from them under conditions that will protect the national security.</p>
9. Identify an acquisition situation where the public interest will be otherwise served by restricting competition.	<p>Market research and other available information must fully support this evaluation. Only consider this authority for restricting competition when none of the authorities in Tasks 1 – 6 above apply.</p> <p>If approved Congress must be notified not less than 30 days before contract award.</p>
10. Justify the need to negotiate or award any contract without full and open competition.	<p>Prepare the justification following the guidelines at FAR 6.303 and FAR 6.302. Each justification must contain sufficient facts to justify the use of the authority cited.</p> <p>The cognizant Contracting Officer must certify that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.</p>

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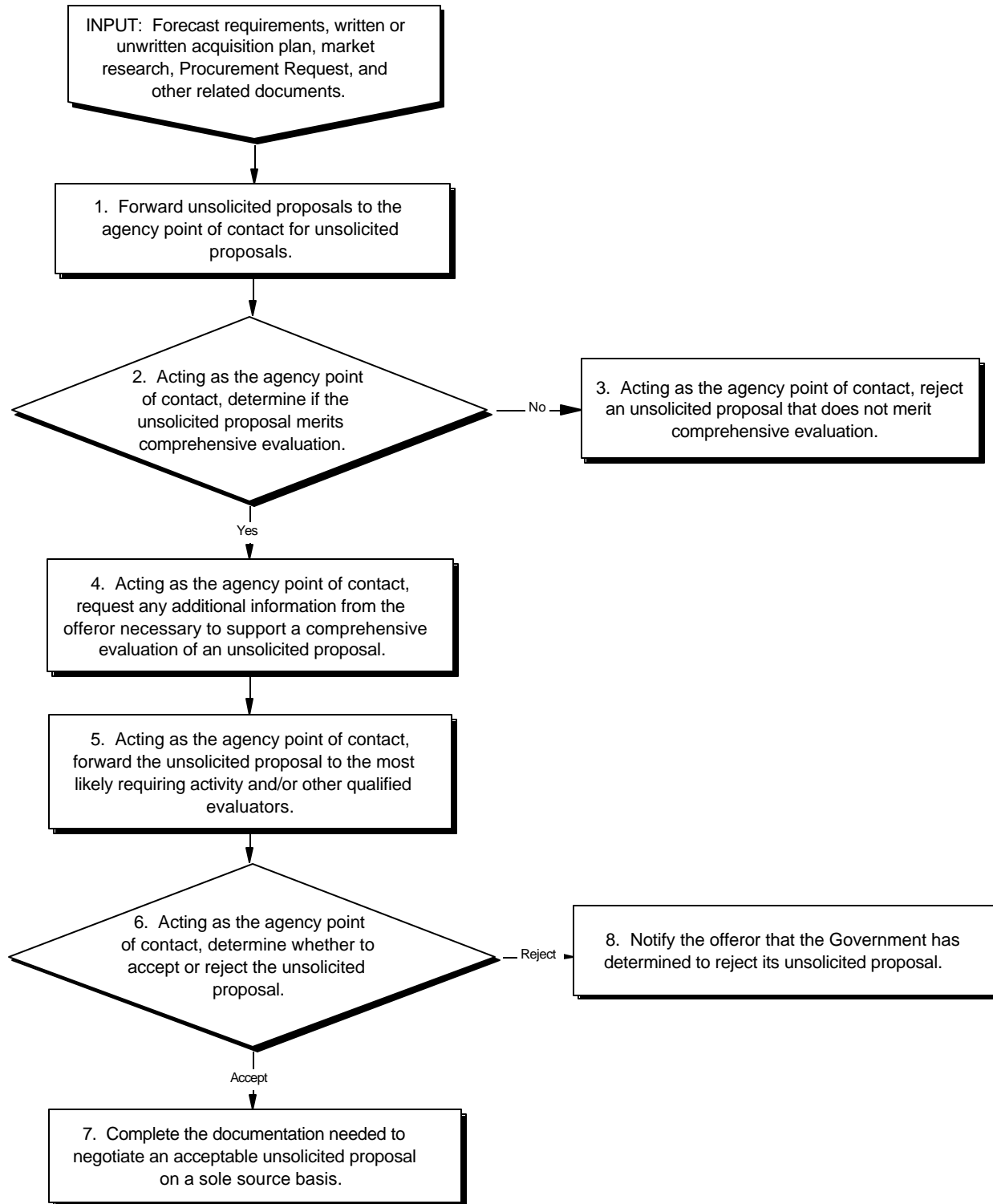
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Tasks	Related Standards
11. Obtain any required approval of a justification for other than full and open competition.	<p>Except when competition is restricted based on the public interest, the justification for other than full and open competition shall be approved in writing. For a proposed contract:</p> <ul style="list-style-type: none">• Not exceeding \$500,000, the Contracting Officer's certification of the justification will serve as approval unless a higher approving level is established in agency procedures.• Over \$500,000 but not exceeding \$10,000,000, the Competition Advocate for the procuring activity must approve the justification. This authority is not delegable.• Over \$10,000,000 but not exceeding \$50,000,000, the Head of the Procuring Activity, or a designee who is a general or flag officer or is serving in a position in grade GS 16 or above (or equivalent) must approve the justification.• Over \$50,000,000, the Senior Procurement Executive of the agency must approve the justification. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense. <p>Any justification to limit competition in the public interest, regardless of dollar amount, is considered approved when the Secretary or Agency Head makes the determination required at FAR 6.302-7(c)(1).</p> <p>When applicable, a class justification for other than full and open competition must be approved in writing in accordance with agency procedures. The approval level is determined by the estimated total value of the class.</p> <p>(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.</p>

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Part C: Considering Unsolicited Proposals

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Part C: Considering Unsolicited Proposals

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Tasks	Related Standards
1. Forward unsolicited proposals to the agency point of contact for unsolicited proposals.	<p>Follow agency procedures for controlling the receipt, reproduction, and distribution of unsolicited proposals.</p> <p>An unsolicited proposal is a written proposal for a new or innovative idea that is submitted on the initiative of the offeror and not in response to a Government request or announcement of any kind. Advertising material, commercial item offers, contributions, or routine correspondence are not unsolicited proposals.</p> <p>It should include the elements required by FAR 15.605, but most important it should be signed by a person authorized to contractually obligate the offeror.</p>
2. Acting as the agency point of contact, determine if the unsolicited proposal merits comprehensive evaluation.	<p>Correctly make the determination considering whether the proposal:</p> <ul style="list-style-type: none">• Is a valid unsolicited proposal, meeting the requirements of FAR 15.603(c);• Is suitable for submission in response to an existing agency request or announcement;• Is related to the agency mission;• Contains sufficient technical and cost information for evaluation;• Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and• Complies with the marking requirements of FAR 15.609. <p>If the proposal meets these requirements, promptly acknowledge receipt.</p>

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Tasks	Related Standards
3. Acting as the agency point of contact, reject an unsolicited proposal that does not merit comprehensive evaluation.	<p>Promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal. The rejection should include information such as the following:</p> <ul style="list-style-type: none">• How the agency interprets the proposal.• Why it is not being evaluated.• The names of other Government offices or agencies that might consider the proposal (if applicable).

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Tasks	Related Standards
4. Acting as the agency point of contact, request any additional information from the offeror necessary to support a comprehensive evaluation of an unsolicited proposal.	<p>Unsolicited proposals should contain the information identified at FAR 15.605, such as:</p> <ul style="list-style-type: none">• Basic information including:<ul style="list-style-type: none">- Offeror's name and address and type of organization;- Names and telephone numbers of offeror technical and business points of contact;- Identification of proprietary data to be used only for evaluation purposes;- Names of other agencies or parties receiving the proposal;- Date of submission; and- Signature of a person authorized to contractually obligate the offeror.• Technical information including:<ul style="list-style-type: none">- Concise proposal title and abstract (approximately 200 words);- A reasonably complete discussion of the technical effort and agency benefit;- Information on the key personnel; and- Any need for agency support.• Supporting information including:<ul style="list-style-type: none">- Proposed price or total estimated cost;- Period of time the proposal is valid;- Type of contract preferred;- Proposed duration of effort;- Brief description the offeror's past experience and performance;- Other applicable information; and- The names and telephone numbers of agency personnel already contacted.

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Tasks	Related Standards
5. Acting as the agency point of contact, forward the unsolicited proposal to the most likely requiring activity and/or other qualified evaluators.	<p>When forwarding an unsolicited proposal for evaluation, the agency point of contact:</p> <ul style="list-style-type: none">• Must attach or imprint on each unsolicited proposal, the legend required by FAR 15.609(d) unless the offeror clearly states in writing that no restrictions are imposed on disclosure.• Should request evaluators to consider factors such as the following:<ul style="list-style-type: none">- Unique, innovative, and meritorious methods, approaches, or concepts;- Overall scientific, technical, or socioeconomic merits;- Potential contribution of the effort to the agency's specific mission;- The offeror's capabilities, related experience, and other factors related to achieving the proposal objectives;- The qualifications, capabilities, and experience of the proposed personnel critical to achieving the objectives; and- The realism of the proposed cost.• Should request each evaluator to submit a written recommendation when the evaluation is completed.• Must not submit unsolicited proposals for review by persons outside the Government if:<ul style="list-style-type: none">- No permission has been received from the offeror for such release, or- The outside persons fail to certify that they will not disclose proposal data.

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Tasks	Related Standards
6. Acting as the agency point of contact, determine whether to accept or reject the unsolicited proposal.	<p>Consider agency evaluations, market research, and other available information. Normally, an unsolicited proposal should be rejected if:</p> <ul style="list-style-type: none">• Its substance:<ul style="list-style-type: none">- Is available to the Government without restriction from another source;- Closely resembles a pending competitive acquisition requirement;- Does not relate to the activity's mission; or- Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.• Adequate funds are not available to accept all or part of the proposal.
7. Complete the documentation needed to negotiate an acceptable unsolicited proposal on a sole source basis.	<p>Prepare the justification following the guidelines in Unit 6, Part A.</p> <p>Prepare a synopsis when required following the requirements of FAR 5.202(a)(8).</p>
8. Notify the offeror that the Government has determined to reject its unsolicited proposal.	<p>Clearly cite the reasons why the proposal is not being accepted.</p> <p>If the Government decides to competitively solicit offers based on a similar requirement, it must not:</p> <ul style="list-style-type: none">• Use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.• Disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information may result in criminal penalties for the personnel involved.